

REMARKS

Claims 1-21 and 26-28 are pending in this application and have been rejected in the Office Action. The claims have been amended as indicated above and support for the amendments can be found throughout the text and Figures of the original application.

Applicant thanks the Office for the courtesies extended in the Examiner Interview of November 12, 2009. The Examiner Interview Summary Record dated November 24, 2009 correctly reflects the discussion between the undersigned and the Examiner. In particular, Applicant appreciates the indication that claims containing the limitation of connector shaft members containing closed ends would overcome the rejections of record.

Rejection under 35 U.S.C. § 112

Claims 1-21 and 26-28 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for the reasons noted on page 3 of the Office Action.

The Office argues that the term “dissimilar length” is unclear since the difference in the lengths is necessary to determine what is dissimilar. At the same time, the Office interprets this phrase to mean unequal length for the purposes of examination. Applicant respectfully disagrees with this rejection since this term is easily understood by the skilled artisan. That understanding is the same understanding arrived at by the Office: “dissimilar” means not the same or unequal. Nevertheless, the claims have been amended to substitute the term “unequal” for “dissimilar” since the meaning—and therefore the scope—of these terms are synonymous.

The Office notes that the limitation “protrusion” in claim 13 has insufficient antecedent basis. Applicant thanks the Office for its attention to detail. Accordingly, claim 13 have been amended to correct this error.

Accordingly, Applicant respectfully requests withdrawal of this ground of rejection.

Rejection under 35 U.S.C. § 102(e)

The Office has rejected claims 1-11, 14, 15, and 26-27 under 35 U.S.C. § 102(e) as being anticipated by Wilson '396 (U.S. Patent No. 6921396) for the reasons noted on pages 3-5 of the Office Action. Applicant respectfully traverses this rejection.

Applicant disagrees with this rejection over Wilson '396 for the numerous reasons of record; namely, that the Office has not shown that Wilson '396 describes the claimed tunneler. Just because Wilson '396 describe a multi-lumen catheter that is “capable of being used as a tunneler” does not mean that the skilled artisan would understand that it is a tunneler. Indeed, the skilled artisan would understand that it is not a tunneler since Wilson '396 specifically disclose in several instances that the catheter is pulled through a tunnel that has already been created. Such a conclusion is supported by the Rule 132 Declaration signed by Kelly B. Powers.

As well, for the reasons of record, the Office has not shown that Wilson '396 describes a device that contains a tunneler shaft for creating a tunnel in the skin of a patient where the shaft contains a first end with a tapered section.

Nevertheless, in an effort to expedite examination, Applicant has amended the claims to include the limitation that the connector shaft members contain closed ends. As recognized by the Office in the Examiner Interview, such a limitation overcomes the rejection of these claims

over Wilson '396. Accordingly, Applicant respectfully requests withdrawal of this ground of rejection.

Rejection under 35 U.S.C. § 102(b)

The Office has rejected claims 21 and 28 under 35 U.S.C. § 102(b) as being anticipated by Edelman et al. (U.S. Patent No. 46726240) for the reasons noted on page 5 of the Office Action. Applicant respectfully traverses this rejection.

The claims are related to a tunneler containing a rigid tunneler shaft. Yet the Office has not shown that Edelman et al. describe such a device. Indeed, it would be difficult for the Office to show such a feature since Edelman et al. describe that their device is flexible enough to bend in the vein of the patient without kinking. *See column 1, lines 46-48.*

As well, the claims contain the limitation that the connector shaft members of the tunneler contain closed ends. As recognized by the Office in the Examiner Interview, such a limitation overcomes the rejection of these claims over Edelman et al. Accordingly, Applicant respectfully requests withdrawal of this ground of rejection.

Rejection under 35 U.S.C. § 103

The Office has rejected claims 12-13 under 35 U.S.C. § 103 as being unpatentable over Wilson '396 in view of Wilson et al. (U.S. Patent Application No. 2002/0099326) for the reasons noted on pages 5-6. Applicant respectfully traverses this rejection.

For the numerous reasons of record, the Office has not shown that either Wilson '396 or Wilson et al. describe the claimed tunneler. Just because these references describe a multi-lumen catheter that is "capable of being used as a tunneler" does not mean that the skilled artisan would

understand that it is a tunneler. Indeed, the skilled artisan would understand that it is not a tunneler since both references specifically disclose in several instances that the catheter is pulled through a tunnel that has already been created. As well, the claims include the limitation that the connector shaft members of the tunneler contain closed ends.

Thus, neither Wilson et al. nor Wilson '396, either alone or in combination, teach or suggest each and every element of the claims. Accordingly, Applicant respectfully requests withdrawal of this ground of rejection.

Rejection under 35 U.S.C. § 103

The Office has rejected claims 16-20 under 35 U.S.C. § 103 as being unpatentable over Wilson '396 in view of Delaloye et al. (U.S. Patent No. 6165167) for the reasons noted on pages 6-7. Applicant respectfully traverses this rejection.

As noted above, the Office has not shown that Wilson '396 describe a tunneler, as recited in the claims. And the Office has not shown that Delaloye et al. describe such a device. Accordingly, since the Office has not substantiated that either cited reference teaches this feature, it is unlikely that the Office can show that their combination suggests such a feature.

As well, the claims include the limitation that the connector shaft members of the tunneler contain closed ends. As recognized by the Office in the Examiner Interview, such a limitation overcomes the rejection of these claims over this combination of references. Accordingly, Applicant respectfully requests withdrawal of this ground of rejection.

CONCLUSION

For the above reasons, as well as those of record, Applicant respectfully requests withdrawal of the pending grounds of rejection and allowance of the pending claims.

If there is any fee due in connection with the filing of this Amendment, including a fee for any extension of time not accounted for above, please charge the fee to our Deposit Account No. 50-0843.

Respectfully Submitted,

By 
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Date: December 1, 2009